IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

WRIT PETITION NO.1967 OF 1999

1. M/s.Ceat Limited, a company
incorporated under the Companies
Act, 1956 and having its Registered
Office at 463, Dr.Annie Besant Road,
Worli, Mumbai 400 025.

2. Mr.Udyan Batukrai Mehta, of Mumbai
Indian Inhabitant residing at Anil
Building, Indranarayan Road,
Mumbai 400 054. Petitioners

versus

1. The Union of India

2. The Deputy Commissioner of
Central Excise, Bhandup Division,
Mumbai-II having its office at
Mid-Town Plaza, Shivaji Nagar,
Thane 400 604.

3. The Superintendent of Central Excise,
Range III, Division Bhandup,
having his office at C/o.Ceat Ltd.
Bhandup, Mumbai 400 078. Respondents

Mr.D.B.Shroff, Senior Counsel with Mr.H.B.Daruwalla and
Mr.H.N.Vakil, Advocates i/b.M/s.Mulla & Mulla for the
petitioners.

Mr.A.J. Rana, Senior Counsel with Mr.P.S.Jetley,
Advocate for the respondents.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 17th March, 2006

ORAL JUDGMENT (Per R.M.Lodha,J.).

We heard Mr.D.B.Shroff, the learned senior counsel for the petitioners and Mr.A.J.Rana, the learned senior

counsel for the revenue.

2. On 22nd November 1999 while issuing rule this Court passed the following order:

> " Leave to amend the writ petition in terms of draft handed in. Amendment to be carried out within two weeks.
>
> 2. Rule. We have heard the learned counsel for the revenue. We are not, prima-facie, satisfied that the impugned order does not make a departure from the Provisional Assessment Order dated 17/12/1997. In view of the judgment of the Supreme Court in Collector of Central Excise, Patna vs. I.T.C. Limited, reported in 1994)71) E.L.T.324 (S.C.), the appropriate officer could not have made this departure without issuing a previous show cause Notice indicating the grounds on which he proposed to depart from the provisional order. This action on the part of the Assistant Commissioner may also fall within the province of the expression "Reassessment" ... used in Rule 173 C(4). For both reasons, we are inclined to grant the interim relief in the present writ petition.
>
> 3. Interim relief in terms of prayer clause c(i) and c(ii) only.
>
> 4. This interim relief does not prevent the Revenue from withdrawing the impugned order, issuing a Show Cause Notice and giving a fresh hearing to the petitioners with regard to the finalisation of the Provisional Assessment."

3. Pursuant to the aforesaid interim order and in the light of the liberty granted to the revenue in issuing show cause notice and giving the petitioners a fresh hearing with regard to the finalisation of the Provisional Assessment, the Assistant Commissioner,. Central Excise, Bhandup Division, Mumbai-III had issued

show cause notice to the petitioners on 14th February, 2006 calling upon the petitioners to show cause as to why deductions claimed by the assessee be not reconsidered and Provisional Assessment be reconsidered for finalisation. We are informed that the order in original (Exhibit "J") has already been set aside in appeal by the Commissioner (Appeals) on 15th January, 2002. However, the Commissioner (Appeals) has asked the Assistant Commissioner to act as per the interim order passed by this Court on 22nd November, 1999. Obviously, upon setting aside the order in original (Exhibit "J"), the demand (Exhibit "K-1") does not survive and, consequently, the encashment of Bank Guarantee in the sum of Rs.37.5 lacs by the respondents cannot be sustained.

4. We, accordingly, dispose of this writ petition by the following order:

(i) The respondents shall pay back to the petitioner a sum of Rs.37.5 lacs that they recovered by way of encashment of Bank Guarantee within four weeks from today.

(ii) The petitioners are directed,

simultaneously, to furnish Bank Guarantee in the sum of Rs.37.5 lacs within four weeks from today. The said Bank Guarantee shall remain operative until the finalisation of Provisional Assessment pursuant to the Show Cause Notice dated 14th February, 2006 and the expiry of the period of limitation for an appeal from such order, if the order is adverse to the petitioners.

(iii) The Assistant Commissioner, Central Excise, Bhandup Division, Mumbai-III is expected to complete the finalisation of Provisional Assessment pursuant to the show cause notice dated 14th February, 2006 within one year from today.

. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)